

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:00-CR-130WHB

LIONEL M. ARNOLD

OPINION AND ORDER

This cause is before the Court on Petitioner's Motion for Modification of Sentence. After a review of the Motion, the Court finds that Petitioner failed to follow the proper procedure for the filing of a second motion attacking a sentence.

Petitioner has previously filed a Motion to Vacate his sentence under 28 U.S.C. § 2255. That Motion was denied by an Opinion and Order entered by this Court on November 10, 2004. Petitioner did not appeal that decision. On May 30, 2006, Petitioner filed the subject Motion for Modification of Sentence. The May 30, 2006, Motion represents Petitioner's second attack of his sentence. The specific procedural guidelines enunciated in 28 U.S.C. § 2255 govern a second attack on a sentence. In relevant part, § 2255 states:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Petitioner failed to obtain Fifth Circuit certification of this, his second Motion attacking his sentence. Therefore, the subject Motion must be denied, without prejudice, for failure to comply with the procedural guidelines of 28 U.S.C. § 2255.

IT IS THEREFORE ORDERED that Petitioner's Motion for Modification of Sentence [docket entry no. 31] is hereby denied.

SO ORDERED this the 21st day of June, 2006.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

blj

